Supreme Court, U. S.
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No 79-1734

In The

Supreme Court of the United States

October Term, 1980

ROBERT PARRATT and FRANCIS LUGENBILL,

Petitioner,

vs.

BERT TAYLOR, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 1, 1980
CERTIORARI GRANTED OCTOBER 20, 1980

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CHRONOLOGY OF EVENTS

March 24, 1976	—	Complaint
April 4, 1976	—	Answer
October 12, 1976	—	Answers to Interrogatories by Defendants Parratt and Lugenbill
January 18, 1978	—	Stipulation Re: Testimony of Robert Rybolt
June 1, 1978	—	Plaintiff Taylor's Motion for Summary Judgment

October 25, 1978	—	Memorandum Opinion sustaining Summary Judgment
April 27, 1979	—	Judgment, U. S. District Court for the District of Nebraska
January 29, 1980	—	Opinion, U. S. Court of Appeals for the Eighth Circuit

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MEMORANDUM AND ORDER

(Filed March 24, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEBRASKA

CV76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

MR. ROBERT PARRATT, individually and in his official capacity as Warden of the Nebraska Penal Complex; MR. FRANCIS LUGENBILL, individually and in his official capacity as Hobby Manager of the Nebraska Penal and Correctional Complex,

Defendants.

Bert Taylor, Jr., an inmate at the Nebraska Penal and Correctional Complex, has submitted a petition for relief under the Civil Rights Act, 42 U. S. C. § 1983, accompanied by a request to proceed in forma pauperis. The plaintiff contends that various hobby materials ordered by him from a California company were received by prison officials but were not turned over to him.

This is not the first time that the plaintiff has brought this issue before the court. In an order dated October 17, 1975, I denied the plaintiff leave to proceed in forma pauperis, urging him to seek relief first through the inmate grievance procedures. The plaintiff responded that he had done so and had been unsuccessful in obtaining the relief desired. I thus proceeded to the merits of the plaintiff's claim and in my order of November 4, 1975, ruled that the plaintiff's claims were legally frivolous under 28 U. S. C. § 1915 (d). The plaintiff then filed a notice of appeal, which I construed as a motion for leave to proceed on appeal in forma pauperis. I denied this motion on December 12, 1975, ruling that the issue in the case was legally frivolous.

The plaintiff now raises this same issue again. Accordingly, I must construe this petition as a motion for relief from judgment under Rule 60 (b) (1) of the Federal Rules of Civil Procedure for "mistake, inadvertence, surprise, or neglect." The plaintiff alleges facts beyond those pleaded in his previously dismissed complaints. He states that this was not simply a matter of not being able to order the goods he desired, but rather is a case where after he had made payment for the goods out of his inmate account at the Penal Complex, the goods were received by the prison but were never turned over to him, and that since that time he has received neither the goods nor a return of his money. It would appear that a cause of action for deprivation of property without due process of law under the Fourteenth Amendment has been stated. The plaintiff's failure to plead such facts in his original pro se petition can be characterized as mistake, inadvertence, or excusable neglect under Rule 60 (b) (1).

IT HEREBY IS ORDERED:

1. That the petition will be construed as a motion for relief from judgment under Rule 60 (b) (1) of the Federal Rules of Civil Procedure and the motion is granted;

2. That the petition be filed by the clerk without the prepayment of costs and that the clerk issue a summons in the usual form and mail it and a copy of the complaint to the Attorney General of the State of Nebraska; and

3. That the defendants shall file a responsive pleading within twenty days of the receipt of the summons and complaint by the Attorney General of Nebraska.

Dated March 23, 1976.

By the Court

/s/ Hon. Warren K. Urbom
Chief Judge

COMPLAINT

(Filed March 24, 1976)

Civil Action No. 76-L-57

(Civil Rights)

Bert Taylor, Jr. 28614
Box 81248 M. S. U.
Lincoln, Nebraska 68501
In Propria Personam

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEBRASKA

BERT TAYLOR, JR.,

Plaintiff,

vs.

MR. ROBERT PARRATT, individually and in his Official Capacity as Warden of the Nebraska Penal Complex; MR. FRANCIS LUGENBILL, individually and in his Official Capacity as Hobby Manager of the Nebraska Penal and Correctional Complex,

Defendants.

I. Jurisdiction

1. This is a civil action authorized by 42 U. S. C. sec. 1983 to redress the deprivation, under color of state law of rights secured by the Constitution of the United States. The Court has jurisdiction under 28 U. S. C. sec. 1343. Plaintiff seeks declaratory relief pursuant to 28 U. S. C. secs. 2201 and 2202.

II. Plaintiff

2. Plaintiff Bert Taylor, Jr. is and was at all times mentioned herein a prisoner of the State of Nebraska, in the custody of the Department of Correctional Services.

He is currently confined in the Nebraska State Reformatory for Men at Lincoln, Nebraska.

III. Defendants

3. Defendant, Mr. Robert Parratt, is the Warden of the Nebraska Penal and Correctional Complex. He is legally responsible for the operation of the Nebraska Penal and Correctional Complex and for the welfare of all the inmates of that prison.

4. Defendant Mr. Francis Lugenbill, is the Hobby Manager of the Nebraska Penal and Correctional Complex. Who at the times mentioned held said position, at said prison and was directly responsible for the operation of the Hobby Program.

5. Each defendant is sued individually and in his official capacity.

IV. Facts

1. The plaintiff wishes to let the Court know the procedure which is followed in order to order Hobby materials in the Penal Complex and/or Reformatory.

a) First the prisoner must make out an inmate check (Exhibit "C") in the amount to cover the order. Then it must be witnessesd by an Officer and then endorsed.

b) The prisoner then sends said inmate check and Interview Request (Exhibit "B") requesting that a check be issued for specified amount and sent along with order to company that order is to.

c) Said check must approved (Exhibit "C") at place marked by the numeral I. Then said check is issued.

d) When package is received at Institution a package receipt is issued (Exhibit "A"). No one according

to the rules of the Institution is to be allowed to sign this other than the party that receipt is issued to.

2. The plaintiff made out an Hobby Order, Check and Interview Request and sent same to the Accounting Office for Check to be issued payable to the Zymex Co., 900 W. Los Vallecitos, San Marcos, California 92069. This check was issued in the plaintiff's name on April 1, 1975, number of check was 62245 (Exhibit "B").

3. Plaintiff on April 8, 1975, again requested that an check be issued to Zymex for another order, the Number of this check was 62377 (Exhibit "B").

4. On April 14, 1975, the plaintiff was taken from the Reformatory to the Penal Complex where he was placed in the Adjustment Center.

5. On April 17, 1975 and April 21, 1975 packages which plaintiff order from Zymax arrived at the Institution Mail room and Package Receipts were issued for these and marked A/C for Adjustment Center. There is no Hobby done in Adjustment Center (Exhibit "A").

6. On June 2, 1975, plaintiff requested officials at the Reformatory to call the Hobby Manager at the Penal Complex and have said Hobby Manager send plaintiff's Hobby materials to Reformatory. There was no action concerning this at the Complex.

7. Plaintiff contacted his Counselor, Mr. Donald Duncan in regards to said items but he could achieve no results.

8. Plaintiff then wrote to Mr. Robert Rybolt, the Grievance Committee Supervisor, several times and had several talks with him at the Reformatory regarding the

missing packages. Mr. Rybolt investigated and made repeated inquiries but could not find said packages.

9. Plaintiff then contacted the Mail Room and was able to secure copies of the package receipts.

10. Plaintiff contacted Mr. Rybolt again and was advised that the name of the party who signed for the package of April 17, 1975, was that of Chuck Kosta. Paul Gero signed for the package of April 21, 1975. Gero was an inmate in the Penal Complex. The action of these two parties in signing for said packages was strictly in violation of the rules of the Institution.

10. The officials at said Institution permitted the plaintiff to order and pay for said Hobby materials and then after violating their own rules by allowing someone else sign for packages made no effort to reimburse the plaintiff for the money they permitted him to spend.

11. The actions of Mr. Donald Duncan, Counselor and Mr. Robert Rybolt, Grievance Supervisor, in their futile attempts, proves that plaintiff had a right to said items.

V. Legal Claims

1. The plaintiff contends that his rights under the Fourteenth Amendment of the Constitution of the United States were violated. That he was deprived of his property and Due Process of Law.

2. The plaintiff further contends that his right to Due Process under Section 1101 of the Civil Rights Act were denied to him.

3. The plaintiff cites the case of *Lynch v. Household Finance Corp.*, 405 U. S. 538, 92 S. Ct. 1113, 31 L. Ed. 2d 424, on Deprivation of Property Rights.

Stokes v. Bruce, 94 Sup. Ct. 250. Dissenting opinion by Justice Douglas with Chief Justice concurring.

Sostre v. McGinnis, 442 F. 2d 178 (C. A. 2 1971).

Hansen v. May, 502 F. 2d 728 (9th Cir. Aug. 15, 1974).

WHEREFORE, plaintiff prays that this court enter judgment granting plaintiff:

1. A declaratory judgment that the defendants' acts, policies and practices described herein violate plaintiff's right under the United States Constitution and the Civil Rights Act.

2. Compensatory damages in the amount of $1,000.00 from defendants Mr. Robert Parratt and Mr. Francis Lugenbill and from each of them to plaintiff.

3. Punitive damages in the amount of $1,000.00 from defendant Mr. Francis Lugenbill to plaintiff.

4. A jury trial on all issues triable by jury.

5. Plaintiff's costs of the suit.

6. Such other and further relief as this court deems just, proper and equitable.

Date: March 2, 1976

Respectfully submitted,

/s/ Bert Taylor, Jr.

Box 81248 M. S. U.
Lincoln, Nebraska 68501
In Propria Personam.

(Verification omitted in printing.)

EXHIBIT "A"

NEBRASKA STATE PENITENTIARY A/C

Package To Taylor

Date 4-21-75

Package From 900 W. Los Vallecita

City

State Calif.

Contents hobby

Held Out

Signed Chuck Kosta No. 28614

NEBRASKA STATE PENITENTIARY A/C

Package To Taylor

Date 4-17-75

Package From 900 W. Los Vallecitos

City

State Calif.

Contents hobby

Held Out

Signed Gero No. 28614

EXHIBIT "B"

INTERVIEW REQUEST
(Filed January 9, 1976)
Date 1-8 1976

It is respectfully requested that I be granted an interview with Accounting Office in regards to the following matter: I was advised by my Counselor Mr. Duncan to write to you in regards to securing a small claims form.

I would also appreciate the below:

I need the Dates—Numbers and Amounts of the last 2 checks sent to Zymex before the date of April 15, 1975. I need these for the filing of the Small Claims Form.

Thank you.

Explain in detail the matter you wish to discuss

NAME Bert Taylor, Jr. NUMBER 28614
Cell Location Reformatory NA-3

Work Location Dead Lock Porter

Use back of page if more space is required
Do not write in space below

DISPOSITION

April 1, 1975	Check # 62245	11.82
April 8, 1975	Check # 62377	11.65

Sorry, I'm so late but I have had a million and one things to get done. Thanks for your patience.
Date 1-22 1976

ANSWER

(Filed April 16, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CIV No. 76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

ROBERT PARRATT and FRANCIS LUGENBILL,

Defendants.

The defendants for answer to the petition herein:

1. Admit the following allegations contained in the complaint: I. 1; II. 2 and 3; IV: 1, 2, 3, 4, 5, 8, 9 and 10 (except the last sentence thereof).

2. Generally deny each and every other allegation contained in the complaint.

3. Alleged that the hobby materials referred to in the complaint were received, as alleged therein; that thereafter the packages containing said materials were transported to the reformatory unit for delivery to the plaintiff; and that said packages were in fact delivered to the plaintiff.

WHEREFORE, the defendants pray that the complaint herein be denied and dismissed.

ROBERT PARRATT and FRANCIS LUGENBILL, Defendants.

By PAUL L. DOUGLAS
Attorney General

By /s/ C. C. Sheldon
Assistant Attorney General

2115 State Capitol
Lincoln, Nebraska 68509
(402) 471-2682

Their Attorneys.

(Certificate of service omitted in printing.)

ANSWERS TO INTERROGATORIES OF ROBERT PARRATT

(Filed October 12, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

ROBERT PARRATT, et al.,

Defendants.

Defendant Robert Parratt answers the interrogatories of the plaintiff as follows:

1. What is your full name and address?

A. Robert F. Parratt, Nebraska Penal and Correctional Complex, Lincoln, Nebraska.

2. In what capacity were you employed at the Penal Complex in 1975?

A. Warden, Nebraska Penal and Correctional Complex.

3. Will you please state the institutional procedure followed when a package is received at the institution for an inmate.

A. When a package is received at the Complex a form is filled out reciting the name of the addressee, the name and address of the shipper, and the date of receipt. This form is filled out and signed by the person who receives delivery of the incoming package.

4. What type record is kept as to who received a package?

A. The form described in answer 3 is the only official written record.

5. Does this record show who received each package?

A. After receipt and processing packages are delivered to the addressee shown on the form above referred to. No further official record is made.

6. How?

A. The package is delivered to the addressee, as stated above.

7. Are other inmates allowed to sign for packages that do not belong to them?

A. Generally not. However, in the case of the package addressed to the plaintiff herein and received at the institution on April 17, 1975, the receipt form was filled out and signed by Paul Gero, who at the time was an authorized Hobby Center clerk.

8. Is there a set of rules and regulations which govern the procedure to be followed regarding packages?

A. There are no formal published rules specifically covering the procedure of physical delivery to the inmate addressee.

9. If the answer to the above is yes, please submit a copy of the same to the court and plaintiff.

A. Not applicable.

/s/ Robert F. Parratt, Warden, Nebraska Penal and Correctional Complex

(Notarization and certificate of service omitted in printing.)

ANSWERS TO INTERROGATORIES
OF FRANCIS LUGENBILL

(Filed October 12, 1976)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

ROBERT PARRATT, et al.,

Defendants.

Defendant Francis Lugenbill answers the interrogatories of the plaintiff as follows:

1. What is your full name and address?

A. Francis L. Lugenbill, 4125 J Street, Lincoln, Nebraska.

2. In what capacity were you employed at the Penal Complex From April 1 to December 31, 1976 (sic)?

A. As a storekeeper, assigned to the Hobby Center, from May, 1975, to July, 1976.

3. Will you please state what procedures were followed when a package is received for an inmate?

A. When a package is received at the Complex a form is filled out reciting the name of the addressee, the name and address of the shipper, and the date of receipt. This form is filled out and signed by the person who receives delivery of the incoming package.

4. Will you please explain how the names Chuck Kosta and Paul Gero appeared on the package receipts of the plaintiff?

A. The names of these individuals appeared on the receipt forms for two packages addressed to the plaintiff for the reason that said individuals were at the time in question assigned to duty in the Hobby Center.

5. Who is Paul Gero?

A. Paul Gero, at the time in question, was an inmate.

6. Who is Chuck Kosta?

A. Chuck Kosta (whose correct name is "Kostos"), at the time in question, was an employee.

7. Why were these parties allowed to sign for packages which did not belong to them?

A. These individuals filled out and signed the forms described in answer 3 for the reason that it was within the scope of their clerical duties in connection with the Hobby Center.

8. Is the standard institutional policy? Explain.

A. Yes.

9. Were you ever contacted by Mr. Donald Duncan, Counselor, regarding these packages?

A. Yes.

10. Were you ever contacted by Mr. Robert Rybolt, Grievance Supervisor, regarding these packages?

A. Yes.

11. Do you recall approximately how many times?

A. Not exactly; but more than once.

12. Do you recall Mr. Rybolt looking for these packages personally?

A. Yes.

13. Did you ever find them?

A. No.

/s/ Francis L. Lugenbill, Defendant

(Notary and certificate of service omitted in printing.)

MOTION FOR SUMMARY JUDGMENT

(Filed June 5, 1978)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV 76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

MR. ROBERT PARRATT, et al.,

Defendants.

COMES NOW the plaintiff, Bert Taylor, Jr., and moves the court to enter a summary judgment for the plaintiff and against the defendants, Robert Parratt and Francis Lugenbill, for the following reasons:

1. There exists no genuine issue of a material fact between the parties. FED. R. CIV. P. 56 (c).

2. The plaintiff has been deprived of a constitutionally-protected right in violation of 42 U. S. C. § 1983. The fourteenth amendment guarantees him the right not to be deprived of his property without due process of law.

3. The defendants, under color of state law, caused the deprivation of plaintiff's constitutional right by failing to enforce an institutional policy of having an inmate personally receipt for a package received at the institution. The defendants knew or should have known that their actions would result in a violation of plaintiff's constitutional right.

4. The plaintiff is therefore entitled to judgment as a matter of law. FED. R. CIV. P. 56 (c).

BERT TAYLOR, JR., Plaintiff
By /s/ Kevin Colleran
1900 First National Bank Building
Lincoln, Nebraska 68508
402/477-8951

(Certificate of service omitted in printing.)

JUDGMENT

(Filed April 27, 1979)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CIV. 76-L-57

BERT TAYLOR, JR.,

Plaintiff,

vs.

ROBERT PARRATT, et al.,

Defendants.

This matter is before the Court in regard to an award of attorney fees and for entry of judgment in accordance with memorandum opinion entered October 25, 1978. The parties have stipulated to a reasonable attorney fee award, and accordingly

IT IS HEREBY ORDERED that the plaintiff, Bert Taylor, Jr., shall recover from the defendants upon his complaint in the amount of $23.50, plus interest as allowed by law from April 21, 1975, and taxable costs, including an attorney fee of $792.54.

By the Court:

/s/ Albert G. Shatz
Judge, United States District Court